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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 LEONA M. QUALEY, individually and as
10 Personal Representative for the Estate of
11 MOSES PORTILLO,

12 Plaintiffs,

13 vs.

14 COUNTY OF PIERCE, a political subdivision
15 of the State of Washington, d/b/a Pierce
16 County Sheriff's Office, EDWARD TROYER,
17 an individual and THOMAS DOLAN, an
18 individual,

19 Defendants.

20 NO.

21 COMPLAINT FOR WRONGFUL DEATH
22 AND DEMAND FOR JURY

23
24 COME NOW the plaintiffs Leona M. Qualey, individually and as Personal
25 Representative of the Estate of Moses Portillo, by and through their attorneys of record, Daniel
 R. Kyler and Mark B. Melter of Rush, Hannula, Harkins & Kyler, PLLC and hereby state and
 allege as follows:

26 I.

27 This case arises from the unnecessary, reckless, negligent and wrongful killing of Moses
28 Portillo who was shot by Pierce County Sheriff's Deputy Thomas Dolan in violation of proper

1 police procedure, Pierce County Sheriff's Office Policies and Procedures, and Washington
2 Statutory Authority requiring and directing de-escalation by law enforcement officers in their
3 interactions with the members of the public whom they are sworn to protect and defend.

4 **PARTIES**

5 II.

6 Defendant Pierce County is a political subdivision of the State of Washington. Pierce
7 County provides, among other things, law enforcement services through its Sheriff's
8 Department, the Pierce County Sheriff's Office. The Pierce County Sheriff's Office's purpose is
9 to protect its citizenry from harm and its mission is supposed to include creating a safe and
10 secure environment in which citizens and members of the community can live, and work,
11 enforcing the State's laws in a fair and impartial manner in accordance with applicable police
12 standards and practices and safeguarding its citizens' constitutional rights. The reckless and
13 negligent conduct and civil rights violations set forth herein were proximately caused by Pierce
14 County Sheriff's Office customs, policies and practices, ratifications of misconduct and the
15 decisions of its policymakers in failing to train, or enforce training, of its deputies.

16 III.

17 Defendant Edward Troyer is the elected Pierce County Sheriff of the Pierce County
18 Sheriff's Office who, at all times relevant and material hereto was acting under color of law. In
19 his role as the Sheriff, defendant Troyer is ultimately responsible for formulating and
20 implementing the Pierce County Sheriff's Office policies and procedures and ensuring that its
21 deputies are properly and adequately trained for the performance of their duties as law
22 enforcement officers.

1 IV.

2 Defendant Deputy Thomas Dolan is a Pierce County Sheriff's Deputy who at all times
3 relevant hereto was acting under color of state law and in the course and scope of his duties in
4 the performance of his law enforcement responsibilities for the Pierce County Sheriff's Office.

5 V.

6 Plaintiff Leona M. Qualey is the mother of the deceased, Moses Portillo, with which she
7 had a close and loving relationship. Leona M. Qualey is the Personal Representative of the
8 Estate of Moses Portillo and is authorized to undertake this action on behalf of the Estate of
9 Moses Portillo by statute.

10 **JURISDICTION OF VENUE**

11 VI.

12 This Court has jurisdiction pursuant to 28 USC §1331, 1343 and §1367.

13 VII.

14 Venue is proper in the Western District of Washington pursuant to 28 USC §1391
15 because the defendant Pierce County is located in this judicial district and because a substantial
16 portion of the events and conduct giving rise to this claim occurred in Pierce County,
17 Washington, within the Western District of Washington.

18 **STATUTORY COMPLIANCE**

19 VIII.

20 On or about May 1, 2023, Pierce County Risk Management was served with Tort Claims
21 on behalf of Leona (Lytle) M. Qualey individually and the Estate of Moses Portillo.

22 IX.

23 All requirements to the maintenance of this action imposed by RCW 4.96 have

1 accordingly been satisfied.

2 **STATEMENT OF FACTS**

3 X.

4 This case arises from the wrongful killing of Moses Portillo who was shot and killed by
5 Deputy Thomas Dolan during a routine traffic stop on the basis of the vehicle's claimed "faulty
6 rear view mirror" and claimed improper lane change while Moses Portillo was a passenger in
7 that vehicle driven by an acquaintance. The wrongful and tortious killing of Moses Portillo and
8 the ultimate violation of his civil rights was due to the defendants' negligent, reckless and
9 deliberate indifference in the handling of what should have been a routine police matter resulting
10 in the unnecessary and preventable use of deadly force.

12 XI.

13 On or about January 16, 2022, defendant Deputy Thomas Dolan, acting for and on behalf
14 of the Pierce County Sheriff's Office in his role as a deputy, made a traffic stop of a vehicle in
15 which the plaintiff's decedent Moses Portillo was a passenger. At the time of the traffic stop.
16 Moses Portillo suffered from a broken leg which resulted in his left leg being in a cast from hip
17 to foot substantially immobilizing Moses Portillo and the cast requiring that he stretch his left leg
18 across the entirety of the rear seat of the vehicle in which he was a passenger.

19 XII.

20 During the course of Deputy Dolan's obtaining identification from the driver of the
21 vehicle in which Moses Portillo was a passenger and obtaining Moses Portillo's
22 identification, he observed a box of ammunition on the floor of the stopped vehicle. Deputy
23 Dolan unholstered his service weapon and commanded the three (3) occupants of the vehicle to
24 "put their fucking hands on the ceiling". Deputy Dolan did not seek to de-escalate his
25

1 confrontation with the occupants of the vehicle, including Moses Portillo, but rather escalated the
2 situation between the deputy and the occupants of the vehicle by raising his voice, shouting,
3 screaming profanities and aiming his service weapon directly behind the decedent Moses
4 Portillo's head. Contrary to policy and training, Deputy Dolan did not direct the immobilization
5 of the vehicle stopped by directing that the keys be removed from the ignition and placed outside
6 the vehicle. Defendant Deputy Dolan did not position himself behind the C-pillar of the vehicle,
7 nor did he retreat to his patrol vehicle where the existing spotlight of the vehicle was aimed at the
8 occupants of the stopped vehicle to "blind" the occupants. Defendant Deputy Dolan instead
9 continued to scream obscenities at the occupants of the vehicle and give directions which were
10 impossible for the occupants and specifically plaintiff's decedent Moses Portillo to comply with.
11 Defendant Deputy Dolan did not retreat to his vehicle and wait for backup. Despite no
12 threatening action by plaintiff's decedent Moses Portillo, the defendant Deputy Dolan discharged
13 his service weapon 12 times at point blank range directly at the back of the head, neck and upper
14 back of Moses Portillo, striking Moses Portillo 8 times and killing him.
15

16 XIII.

17 Plaintiff's decedent Moses Portillo suffered extreme pain, suffering and eventually
18 succumbed to the myriad of gunshot wounds inflicted on him by the defendant Deputy Dolan
19 and died at the scene.
20

21 XIV.

22 Pierce County Sheriff Deputies including specifically Deputy Thomas Dolan, were not
23 properly trained, failed to follow standard law enforcement practices and protocols, and may
24 have lacked knowledge of the standards regarding the use of deadly force and de-escalation, all
25 of which resulted in the precipitous and unnecessary discharge of Deputy Dolan's service

1 revolver, killing Moses Portillo.

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3 **FIRST CAUSE OF ACTION-UNCONSTITUTIONAL USE**
4 **OF EXCESSIVE FORCE**

5 XV.

6 Defendants are liable for compensatory and punitive damages for subjecting plaintiff's
7 decedent Moses Portillo to the deprivation of his rights guaranteed by the Fourth Amendment to
8 the Constitution of the United States and 42 USC §1983 to be free from deprivation of his life.
9 Defendants deprived Moses Portillo his life by acting in an unreasonable, reckless, dangerous
10 and violent manner and by shooting Moses Portillo without legal cause or justification.
11 Defendants are liable for depriving Moses Portillo of his life, liberty, property and for punitive
12 damages, compensatory damages and reasonable attorney's fees and costs.

13

14 **SECOND CAUSE OF ACTION-VIOLATIONS OF**
CONSTITUTIONAL RIGHTS BY DEFENDANT
PIERCE COUNTY AND POLICYMAKERS

15 XVI.

16

17 Defendant Pierce County and Edward Troyer, the Pierce County Sheriff acted with
18 deliberate indifference to plaintiffs' constitutional rights as set forth above, by failing to train its
19 deputies, failing to supervise and monitor its deputies, failing to adopt and implement policies
20 for, among other things, appropriate de-escalation, control of a scene, detention of a citizen and
21 the use of lethal force as well as other aspects to be proven at the time of trial.

22 XVII.

23 Given the failures demonstrated by Deputy Dolan, it is predictable that the failures of the
24 policymakers described as set forth herein would result in constitutional violations like that
25 which occurred in this case. The plaintiffs' tragedy and the loss of Moses Portillo's life was a

1 foreseeable consequence of the failure of the Pierce County Sheriff's Office to train its deputies
2 with the necessary tools to handle situations that require the use of de-escalation techniques, non-
3 lethal tactics and the appropriate decision-making processes that should accompany the use of
4 lethal force. The proper monitoring and supervision of the Pierce County Sheriff's Deputies
5 would have either rectified and modified Deputy Dolan's conduct.

6 **THIRD CAUSE OF ACTION-NEGLIGENCE OF PIERCE COUNTY**

7 XVIII.

8 Defendants individually and jointly owed a duty to exercise ordinary care when engaging
9 in law enforcement activity.

10 XIX.

11 Defendants owed a duty of reasonable care to adopt and follow appropriate policing
12 practices and procedures in the detention, control, contact, questioning and arrest of citizens.
13 Defendants owed a duty to refrain from negligently, recklessly, wantonly and unreasonably using
14 deadly force against its citizens in and of Pierce County; needlessly and dangerously escalating
15 routine law enforcement encounters; failing to secure a scene and creating a deadly force
16 situation.

17 XX.

18 Defendants owed a duty to ensure that its officers and deputies in its agency are fit for
19 service and properly trained in law enforcement standards and protocols regarding control of a
20 scene, dealing with citizens so as not to unnecessarily escalate encounters and to be familiar with
21 and follow proper and reasonable standards regarding the use of deadly force.

22 XXI.

23 Defendants breached these duties when Pierce County Deputy engaged in the improper,

1 unreasonable, unnecessary and excessive use of force, including but not limited to the handling
2 of events at the scene of this incident, the shooting and killing of Moses Portillo.

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The negligent, reckless and unreasonable conduct of the defendant Deputy Dolan occurred while the deputy was in the course of his law enforcement work and amounted to misfeasance and malfeasance that created a risk of harm and actual harm which ultimately resulted in Moses Portillo's death and damages to his estate and his surviving parent/mother. The deputy's actions were unreasonable, excessive and well outside the standards that reasonable law enforcement officers follow when interacting with citizens.

xxiii.

As a direct and proximate result of defendants' negligence, unreasonable conduct, failure to follow proper law enforcement practices and procedures, plaintiffs suffered general and special damages, including emotional distress, the unnecessary death of Moses Portillo and unnecessary loss of love, companionship and guidance of a son.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment against defendants, jointly and severally as follows:

1. Award plaintiffs' general and special damages including damages for pain, suffering, parent loss of consortium pursuant to 42 USC §1983 and §1988 and in amounts to be proven at the time of trial;

2. Award reasonable attorney's fees and costs pursuant to 42 USC §1988 or as otherwise available under the law;

3. Award damages to plaintiffs and each of them for the unreasonable, negligent

conduct of defendants, the negligent failure of following reasonable and standard law enforcement policies and practices and the unnecessary and reasonable use of excessive, deadly force;

4. Awarding punitive damages on plaintiffs' claims under 42 USC §1983;
 5. Awarding all applicable pre and post-judgment interest as permitted by law;
 6. For such other and further relief as the Court may find fair and just.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), plaintiffs hereby demand a jury for all issues so triable.

DATED this 27th day of July, 2023

By: s/ Daniel R. Kyler
By: s/Mark B. Melter
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